

Márk GYOVAI \* – Eszter KISS-KONDÁS \*\*  
Regulations of auction of agricultural and forestry lands particularly regarding  
to Judicial Enforcement Procedure<sup>1</sup>

## Introduction

The topic is current nowadays because regulations<sup>2</sup> of land auctions has been changed essentially by the Act CXXII of 2013 on Transactions in Agricultural and Forestry Land (hereinafter referred to as Act CXXII of 2013): According to the Act CXXII of 2013 in the case of acquisition of ownership of land<sup>3</sup> through auction or tendering as part of an enforcement or liquidation procedure, or local government debt consolidation procedure (hereinafter referred to as 'auction'), the agricultural administration body shall carry out the auction as provided for in the decree adopted for the implementation of the Act<sup>4</sup>, at the request of the bailiff, liquidator or fiduciary. In this way in connection with the land auctions the auction of immovable property rules of Act LIII of 1994 on Judicial Enforcement (hereinafter referred to as Judicial Enforcement Act) cannot be applied.

According to the Governmental Decree no. 373/2014 (XII.31.) on Tasks and Land Registries and Area of Land Registries and Survey and Remote Sensing Institution (Földmérési és Távérzékelési Intézet), furthermore detailed regulations of procedure of land registries the government pointed out as an agricultural administration body for first instance the district office which is competent according to the location of land and for second instance the government office.

According to the definitions of the Act CXXII of 2013 the 'agricultural, forestry land' shall mean any parcel of land, irrespective of where it is located (within or outside the limits of a settlement), registered in the real estate register as cropland, vineyard, orchard, garden, meadow, permanent pasture (grassland), reed bank or forest or woodland, including any parcel of land shown in the real estate register as non-agricultural land noted under the legal concept of land registered in the Országos Erdőállomány Adattár (National Register of Forests) as forest.

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\* Substitute bailiff, PhD student, University of Miskolc, Deák Ferenc Doctoral School of Law.

\*\* Bailiff assistant, PhD student, University of Miskolc, Deák Ferenc Doctoral School of Law.

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<sup>2</sup> Csák Csilla – Szilágyi János Ede: Legislative tendencies of land ownership acquisition in Hungary, in: Roland Norer – Gottfried Holzer (edit.): *Agrarrecht Jahrbuch: 2013*, Wien, Graz, Neuer Wissenschaftlicher Verlag (NWV), 2013, 215-233.

<sup>3</sup> See in detail: Csák Csilla – Hornyák Zsófia: Az új földforgalmi törvényről, *Östermelő*, 4/2013, 7-10.

<sup>4</sup> Governmental Decree no. 191/2014 (VII.31.) on Regulation of Selling Agricultural and Forestry Lands by Auction in Course of Enforcement, Liquidation, and Local Government Debt Consolidation Procedure.

Unless otherwise provided for by the Act, the provisions on lands shall also apply to farmsteads.<sup>5</sup> This is an important regulation because this is the reason that the auction of lands came out the jurisdiction of bailiffs.

In this paper we would like to introduce regulations of selling agricultural forestry land by auction (hereinafter referred to as land auction) in detail firstly the regulations in act level then the level of the implementation of the Act. The paper focuses primarily on land auctions occurring in judicial enforcement proceedings.

## 1. Auction of agricultural forestry land in the mirror of Act CXXII of 2013

As we mentioned in the introduction the Act CXXII of 2013<sup>6</sup> has changed the rules of land auctions fundamentally. These regulations<sup>7</sup> are introduced in this chapter.

According to the Section 35 of Act CXXII of 2013 not the bailiff carries out the 'forcibly selling' but it is performed by agricultural administration body at the request of the bailiff, liquidator or fiduciary.

It can be mentioned as a significant changing of the Act CXXII of 2013 that in land auctions the rules of electronic auction which is included in Judicial Enforcement Act.<sup>8</sup> Moreover, there is another relevant change in rules of land auctions which is different from the Judicial Enforcement Act: there is no possibility to sell the land without auction.

Participants of the auction are required to verify their eligibility for acquiring the ownership of land by producing the relevant documents at the place where and at the time when the auction is held, and, in the cases provided for in Sections 13-15, they shall provide statements in compliance with the requirements specified therein relating to formalities.

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<sup>5</sup> According to the Act CXXII of 2013 Section 5 Point 25 farmstead' shall mean „a parcel of land located outside the limits of the settlement, not exceeding one hectare in size, consisting – apart from the land – of a residential and farm building or buildings for crop and animal production, and the related processing and storage of agricultural products, or any parcel of land registered in the real estate register as a farmstead.”

<sup>6</sup> See in detail: Szilágyi János Ede: A földforgalmi törvény elfogadásának indokai, körülményei és főbb intézményei, in: Korom Ágoston (edit.): *Az új magyar földforgalmi szabályozás az uniós jogban: Budapesten, 2013. júl. 11-én azonos címmel rendezett konferencia szerkesztett előadásai*, Budapest, Nemzeti Közszerkezet Egység, 2013, 109-119.

<sup>7</sup> Szilágyi János Ede: *Das landwirtschaftliche Grundstücksverkehrsrecht als erster Teil der neuen Ungarischen Ordnung betreffend landwirtschaftlichen Grundstücken*, *Agrar- und Umweltrecht* 45:(2), 2015, 44-50.

<sup>8</sup> According to the Judicial Enforcement Act Section 142: „In connection with the auction of a real estate property the provisions of electronic auctions of movable property shall apply subject to the exceptions set out under this subtitle.”

Of course holders of pre-emption rights can be exercised.<sup>9</sup> Holders of pre-emption rights shall be able to exercise such right at the auction, with the provision that the documents evidencing their right of pre-emption shall also be presented in person at the place where and at the time when the auction is held.

According to the Act CXXII of 2013, the agricultural administration body which carries out the auction shall consider the eligibility<sup>10</sup> of the auction buyer and the right of pre-emption<sup>11</sup> of the person bidding as the holder of pre-emption right, and as to whether the auction sale is predisposed to breach or circumvent restrictions on land acquisitions. It can be happened that there are more than one holder of pre-emption right of the same ranking participating<sup>12</sup> as auction buyers. In this case the one designated by the agricultural administration body shall acquire ownership of the land which – this paper does not deal with this question – can suggest constitutional problems.

If the agricultural administration body approves the acquisition, it shall at the same time endorse the auction report as provided for in its regulations and shall send it to the bailiff, as appropriate. After that the agricultural administration body shall transfer the purchase price shown in the auction report in full to the bailiff.

If the agricultural administration body refuses to approve the acquisition of title by the auction buyer, or if the auction fails, the land in question shall be transferred under State ownership and shall be assigned to the National Land Fund. The agricultural administration body shall communicate its decision on the refusal of approval, and the report on the failure of the auction to the land fund management body as well. The land fund management body shall transfer payment of the appraised value to the bailiff, as appropriate within thirty days following the date of delivery of the final decision or the report on the failure of the auction.

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<sup>9</sup> Olajos István: Az elővásárlási és elő-haszonbérleti jog gyakorlásának speciális szabályai a földforgalomban, in: Barzó Tímea – Juhász Ágnes – Leszkoven László – Pusztahelyi Réka (edit.): *Ünnepi tanulmányok Bíró György professzor 60. születésnapjára*, Miskolc, Novotni Alapítvány a Magánjog Fejlesztéséért, 2015, 375-386.

<sup>10</sup> According to the Governmental Decree no. 373/2014. (XII.31.) Section 40, „*the government office issues an official certificate for application of the client relating to the client is qualified as agriculturist or according to the Act CXXII of 2013 Section 10 the client can acquire the property right of the land, furthermore he/she is appropriate to the Subsection (1) Section 16. The official certificate does not give the right to acquire the property right of land, it just certifies the aa) enforcement or liquidation procedure, or local government debt consolidation procedure or the existence of conditions of participation at auction a) of the land pointed out in the application.*”

<sup>11</sup> Olajos István: Az elővásárlási és előhaszonbérleti jogok gyakorlásának szabályai, in: Szalma József (edit.): *A Magyar Tudomány Napja a Délvidéken*, 2014, 568.

<sup>12</sup> Holló Klaudia: Az elővásárlási jogról mint a földforgalom korlátozásának közvetett eszközéről, *Themis*: 11:(1), 2014, 42-59.

## 2. Regulations of the judicial enforcement act concerning land auctions

Despite of that the Act CXXII of 2013 and its implementing decree include several detailed regulations concerning land auctions we can also find rules in connection with the land auctions in the Judicial Enforcement Act which can have significance from point of view of the new owner who got the land which was under judicial enforcement proceeding.

However firstly the acquisition of immovable property by auction as a form of acquisition of property created pursuant to administrative decision is introduced.

The 'primary' nature of acquisition of lands by auction cannot be considered clear-cut. However most of the authors in Hungarian legal literature and legal practice of the Supreme Court endorse the 'primary' nature of acquisition by auction.

In legal practice of courts, we can find examples that situation when the court defines those frames according to which the auction effects original means of acquisition: *"the auction effects original means of acquisition only that case if the auction happens in the interest of the judgment creditor with judicial enforcement, without the seller's intention to sell arising from his/her right to dispose, independently his/her will."*<sup>13</sup> (BH 2008.239.) According to the view of Gergely Légrádi<sup>14</sup> the acquisition of immovable property by auction cannot be considered clearly 'primary' acquisition because the 'primary' and 'derivative' elements are mixed in this form thus – we can agree with this point of view – he considers it as a 'quasy primary form of acquisition of property.'<sup>15</sup>

According to the Section 5:41 of Hungarian Civil Code (Act V of 2013) – which shall be emphasized because the earlier Civil Code (Act IV of 1959) did not mentioned here the acquisition of immovable property by auction - any person who has acquired a thing in good faith by means of official resolution or official auction shall gain ownership irrespective of who the previous owner was. Upon the acquisition of ownership of the thing by means of official resolution or official auction, the rights of the third party on the thing shall cease, except when the party acquiring ownership by means of official resolution or official auction did not act in good faith in respect of those rights.

According to the Section 137 of the Judicial Enforcement Act the ownership right of the new owner acquiring a seized immovable property shall only have the following encumbrances: easement, right of use for public purposes, beneficial ownership recorded in the real estate register, beneficial ownership by virtue of law even if it is not recorded in the real estate register.

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<sup>13</sup> „The auction effects original means of acquisition only that case if the alienation happens independently the seller's will, in the interest of the judgment creditor with judicial enforcement, not necessarily at the market value of the thing and the seller's intention to sell arising from right to dispose is missing.” (BH 2008.239.)

<sup>14</sup>See in detail: Légrádi Gergely: Az árverésről- gondolatok egy Janus-arcú szerződésről, *Polgári jogi kodifikáció*, 2003/1. szám

<sup>15</sup> Gyovai Márk: Ingatlanárverések a végrehajtói gyakorlatban, *Magyar Jog*, 2015. január, 41-50.

As an exception in the Subsection (2) appears that the rights of the new owner of an immovable property shall not be limited by any right of beneficial use, whether or not recorded in the real estate register, if the holder of such usufruct is liable to satisfy the claim of the judgment creditor, or if it was established by contract after the mortgage has been attached.

The Subsection (3) establishes – which is the most 'important' in connection our topic – that if a third party (hereinafter referred to as 'land user') holds any right fixed in a contract for the use of landed areas used for agricultural and forestry purposes as defined in the Act on Transactions in Agricultural and Forestry Land (Act CXXII of 2013), which are seized for the purpose of enforcement, the ownership right of the new owner acquiring the seized land shall be restricted, apart from the rights referred to in Subsection (1), by such land use rights as provided for in Section 137/A.

Section 137/A regulates that how land use rights can limit the ownership right of auction buyer because if there is land use right based on contract on the agricultural, forestry land under judicial enforcement procedure in that case land use right will charge his/her ownership right.<sup>16</sup>

The Section 137/A of of the Judicial Enforcement Act establishes that subject to the exceptions provided for the above mentioned Subsection (2), land use rights shall be terminated on the last day of the sixth month following the date of registration of the new owner's right of ownership in the real estate register.

There are two groups of exceptions under this regulation: Land use rights shall not terminate on the deadline prescribed in Subsection (1), if: the new owner makes a written statement to the land user for the retention of the land use right before the deadline prescribed in Subsection (1), or the land user received any land-based agricultural and rural development support funded from European Union or national resources, subject to the obligation of land use as prescribed by law for a specific period as a precondition for the support.

In these cases – provided for in the above mentioned exceptions – the land use right shall terminate in accordance with, and at the time provided for in, the legislation governing the termination of the contract for such right.

The provisions of Subsection (1) shall also apply to land use rights acquired following the seizure of the land in question that is land use rights shall be terminated on the last day of the sixth month following the date of registration of the new owner's right of ownership in the real estate register.

### **3. Land auction rules in the implementing decree of Act CXXII of 2013**

In the above chapter the paper included examination of the 'act level' regulation, in this chapter discusses the procedural rules (briefly) which are contained in the implementing decree of Act CXXII of 2013 (191/2014. (VII.31.) governmental regulation, hereinafter referred as to Regulation) which came into force on 1<sup>st</sup> of August 2014.

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<sup>16</sup> Kiss Nikolett – Osztovits András – Pomeisl András – Villám Krisztián: *Kommentár a bírósági végrehajtásról szóló 1994. évi LIII. törvényhez*, OptiJUS Opten Kft., 2015, 286.

### 3.1. Rules of the request for the auction

If it is necessary to order land auction (of agricultural, forestry land) in enforcement or liquidation procedure, or local government debt consolidation procedure the applicant<sup>17</sup> sends a request to the agricultural administration body – which has jurisdiction on the basis of the location of the land – in 30 days from the occurrence of conditions of sale in the cause of publication of auction or sale notice and the auction. In this case the bailiff practically sends a request to the agricultural administration body instead of publication of auction notice.

The contents of request are established in the Regulation. The content elements of the request have similarities with the immovable property auction notice included in Judicial Enforcement Act. The request must include: the name of the applicant, the address of its office, its phone number, its invoice number, moreover the name and address of the judgement debtor and the judgment creditor in judicial enforcement procedure, the amount of lowest bid according to the rules of Section 147 of Judicial Enforcement Act<sup>18</sup> or Section 204/B of Judicial Enforcement Act<sup>19</sup>, and information about pre-auction rights (for a real-estate) of the local government or the other owners of the land. In connection with the land it must include its real estate registration data, the name of the owner, the above mentioned rights: easement, right of use for public purposes, beneficial ownership recorded in the real estate register, beneficial ownership by virtue of law even if it is not recorded in the real estate register, lien, land use right recorded in leasehold registry and register of foresters and its term, moreover the building registered with the land and its main function, the appraised value of land<sup>20</sup>. Last but not least the possibility and conditions for auction buyers to watch the building registered with the land.

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<sup>17</sup> Applicant can be a bailliff, a liquidator or fiduciary

<sup>18</sup> Section 147 of Judicial Enforcement Act „*Subject to the exception set out in Subsection (3), bids for the property are accepted if made in an amount covering at least half the reserve price. (3) In respect of residential properties, bids are accepted if made in an amount covering at least 70 per cent of the reserve price if it is the only residential property of the judgment debtor, it is his residence and it has been for six months prior to commencement of the enforcement procedure.*”

<sup>19</sup> Section 204/B of Judicial Enforcement Act: At the lien holder’s request, the court shall append an enforcement clause to the authentic instrument on a contract of pledge [Subsection (3) of Section 23/C], and order the enforcement of a pecuniary claim secured by a lien by the sale of the pledged goods by the simplified enforcement procedure if the lien holder has agreed with the lienor in writing before the right to satisfaction has opened – by establishing the lowest sale price or a formula for calculating the sale price – regarding the sale of pledged goods by the simplified enforcement procedure.

<sup>20</sup> Which is sent by the applicant to the National Land Fund according to Section 17 of the Regulation.

### 3.2. The auction notice

After that the agricultural administration body got the request it schedules the auction by means of auction notice within 15 days (from the delivery of the request). That is the reason why request and auction notice are very similar regarding to their content elements. The necessary data are the following: the agricultural administration body's name, address of its office, its phone number, its invoice number, the place, time and identifier number of the auction, the names of the judgement debtor and judgement creditor, and the legal title and amount of principle claims in judicial enforcement procedure. In connection with the land it must include the real estate registration and leasehold data especially: name of the settlement, the placement of the land, topographical lot number, the growth of the territory, gold crown value, the name of the owner, the above mentioned rights: easement, right of use for public purposes, beneficial ownership recorded in the real estate register, beneficial ownership by virtue of law even if it is not recorded in the real estate register, lien, land use right recorded in leasehold registry and register of foresters and its term, the relevant specialities of the land, the building registered with the land and its main function, and the appraised value of land. Furthermore, it must contain the amount of auction deposit (hereinafter referred as to deposit) and bid, moreover the minimum purchase price to be offered, and the bidding threshold. In addition it must have include notification for who have pre-auction rights about that the condition to exercise their rights is to take part at the auction; notification about the possibility of taking image and voice records. Last but not least it is necessary to include the the possibility and conditions for auction buyers to watch the building registered with the land and other information which concern the auction buyers.

The Regulation establishes the place and the date of the auction: it can be placed at the location office (according to the location of the land). The date of the auction shall be established in that way that it cannot be earlier than the 60<sup>th</sup> day from the scheduling of the auction but it cannot be later than the 90<sup>th</sup> day from the scheduling of the auction. The scheduling day do not include into the counting of these deadlines.

After that the auction notice is finished it has to be deliver within 8 days to that people who are nominated in the Regulation. In the judicial enforcement procedure the auction notice has to be delivered to judgement creditor, judgement debtor moreover those who have rights in connection with the land in the real estate registration, the other owner(s) if the land is in co-ownership, and last but not least notaries of villages, towns, Budapest district governments – competent for the location of the land - to placarding the auction notice. Moreover, it has to be delivered to the real estate supervisory authority (also competent for the location of the land) to record the fact of scheduling the auction into the real estate registration, and of course it has also to be sent to the applicant that is the bailiff.

It has to be ensured that the completed auction notice is placard. The finished auction notice has to be placard on the bulletin board of the agricultural administration body, bulletin board of settlement mayor's office competent for the location of the land, and in the case of the joint mayor's office it shall be placard on the bulletin board of the joint mayor's office and the mayor's office belonging to the joint mayor's office. Last but not least it has to be placard on the bulletin board of real estate supervisory authority and the court responsible for enforcement. Furthermore, it has to be published on the website of government office. It is important in both cases (on bulletin boards and websites) auction notices shall be left posted for no less than thirty days before the auction, until the fifth day preceding the auction. Upon the request of either party (judgement creditor or judgement debtor), the agricultural administration body shall arrange for publicizing the auction in other appropriate ways as well.

In legal practice the next problem has been raised: Are there any remedies which are available against the auction notice? And if there are which remedies are those?

The auction notice – in our opinion – cannot be attacked by demurrer because that is not during the bailiff's procedure but it was prepared during the agricultural administration body's measures. The request of bailiff could be attacked by demurrer but it does not have to be sent the parties, it has to be delivered to the agricultural administration body. Administration bodies – usually – do not ensure jurisdiction of remedy against the auction notice which raises constitutional questions (in connection with the jurisdiction of remedy). According to our opinion if neither the Regulation nor the Act CXXII of 2013 do not ensure special remedy against the auction notice in that case the rules of Act CXL of 2004 on the General Rules of Administrative Proceedings and Services – as the background of the administrative proceedings,<sup>21</sup> the code of the administration – shall be predominated and in consequence of this the appeal according to the Act CXL of 2004 shall be applied against the auction notice. Unless otherwise prescribed by an act or government decree, an appeal shall be lodged within fifteen days – it shall be submitted to the authority that adopted the decision contested – following the date of delivery of the decision. In the appeal no new evidence may be introduced, of which the client was aware before the decision was adopted. The appeal shall be reasoned.<sup>22</sup>

### 3.3. The process of the auction

One of the most important elements of the auction is that who has the possibility to be an auction buyer. It is necessary to be an auction buyer firstly to deposit the 10% of the appraised value of the land as the advance money at least before the beginning of auction at the agricultural administration body, secondly to pay the bid

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<sup>21</sup> According to general reasoning of the Act CXL of 2004: „*Thus it is significantly necessary that the administration shall proceed in procedure which is fast, easy, and clear for citizens, and at the same time complies with acts and enforces professional aspects.*” In the interest of it there was necessary to create a code which is the Act CXL of 2004.

<sup>22</sup> See in detail: Section 98-107 of Act CXL of 2004.



furthermore according to the rules of Act CXXII of 2013 (Section 35), and to produce the relevant documents which verify their eligibility for acquiring the ownership of land and to enclose declarations according to Sections 13-15 of Act CXXII of 2013 – suitably the formalities established in the Act.

The above mentioned deposit the advance money and paying bid could happen by transfer.<sup>23</sup> The identification number of auction shall be noticed in the announcement of the transfer. The advance money and bid shall be transferred to the deposit account of agricultural administration body before the date of auction. The person who deposited the money can bid if he/she presents the report about the transfer to the auctioneer and lodge a copy of it.

The Regulation also establishes those who cannot be bidder and auction buyer.

These are for example according to Section 123 of the Judicial Enforcement Act: neither in person nor through an authorized representative or proxy, may not represent bidders, and may not acquire the asset directly or indirectly by way of auction bailiffs, substitute bailiffs, bailiff assistants, other employees of bailiffs, bailiffs' offices, members or employees of bailiffs' offices; any legal person or business association in which either of the persons or organizations have majority control; the close relatives and domestic partners of acting bailiffs, substitute bailiffs, members of bailiffs' offices and employees of bailiffs and bailiffs' offices; staff members of the court responsible for enforcement; and the judgment debtor.

The Act of Judicial Enforcement establishes that the persons or organizations referred to in the above mentioned shall not be excluded from the auction if their entitlement to acquire the asset in question derives from their judgment creditor or co-owner status, or if they have the right of pre-emption afforded under specific other legislation for the asset. Thus if the bailiff is in a co-owner status of a land (or a part of a land) which is under auction – with fulfilment of further criteria – the bailiff can participate at the auction.

Act CXXII of 2013 also has regulations in connection with it in Section 9. Ownership of land may not be acquired by: third-country natural persons; foreign states, including their provinces, local authorities, and the bodies thereof; legal persons, except as provided for in this Act. It also determines that legal persons established by way of division, separation, merger (merger by the formation of a new company or merger by acquisition), reorganization (organizational transformation) – not including listed churches or their internal legal entities – may not acquire the ownership of land acquired by its predecessor as provided for in Act CXXII of 2013, or acquired by its predecessor before the time of entry into force of Act CXXII of 2013.

Moreover, according to the Regulation county government offices and government offices of Budapest also cannot be bidder and auction buyer, furthermore the person, who takes part in authority which examines the remedies in connection with the auction, who takes part in organization of the auction, and participate in making decisions according to the auction official report, moreover takes part in

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<sup>23</sup> The bid shall be the 1% of the appraised value of the land but at least HUF 2.000 and maximum HUF 10.000. Bid is the income of government office competent to the location of the land.

judgment of remedies. Here the question is arisen: if we can speak about authorities which deal with judgement of remedies in that case *a maiore ad minus* we can conclude that there is some kind of remedy against the auction notice (if there is an authority to judge it). It might happen that the remedy can only present against the official report of the auction and the 'in connection with auction' referred to the official report of auction.

At least it cannot be bidder who does not suitable for the conditions of having the right of being bidder or auction buyer according to the Regulation.

The process of auction is the following: Bidders may bid in person, or through an authorized representative or proxy. The agricultural administration body, the applicant, the parties who was took part in the request procedure and the bidders can take part at the auction. The agricultural administration body takes image and voice record about everyone who take part in the auction and give written consent in the interest of the procedure can be legal and controllable. These records can be given out to the court, the authority intervening in criminal cases and authorities which deal with judgement of remedies and only these bodies can watch them. The agricultural administration body shall delete these records with the passing of 3 months but at the latest after finishing the remedy procedure on the basis of the Regulation.

The auction shall begin by the agricultural administration body announcing to the bidders the appraised value (reserve price) then the conditions of the auction are set out, calling upon the ones who are at the auction to present their rights and describe the act and order of rank, and calling upon the bidders to quote their bids. The reserve price of the land is the amount of the appraised value. The main rule is that the highest price offered has to be at least the 50% of the reserve price in auctions which are in connection with judicial enforcement procedure or local government debt consolidation procedure.

One of the exceptions from this rule is the land (farm) – as it was mentioned in the introduction according to main rules the regulations concerning to land shall be applied in the case of farms – in respect of that, bids are accepted if made in an amount covering at least 70% of the reserve price if it is the only residential property of the judgment debtor, it is his residence and it has been for six months prior to commencement of the enforcement procedure.

Moreover, it is also an exception if the land is put up for auction according to the lowest selling price included in Section 204/B of Judicial Enforcement Act. Governmental Regulation, because in these cases only that price can be offered which reaches at least these minimal prices.

The Regulation establishes the amount of bid threshold: if the appraised value less than 10 million Ft. the threshold is the 2% of the appraised value but at least 1000 Ft; it is more than 10 million Ft the threshold is the 1% of the appraised value.

That bid is valid which is – at least with the amount of the threshold – more than the bid which was primary made. Bidder may not withdraw the bid.

The auction has to be continue until valid bids came from bidders. If there are no more bids the auctioneer tells three times the highest price offered and then calls upon the ones who have pre-auction rights (and take place at the auction) to exercise them.

As it was mentioned above right of pre-emption has to be justified by proper document. Thus pre-emption right can only be exercised if its holder can make bid – so who is appropriate to the conditions of Section 5 Subsection (1) of the Regulation – and present the justifying documents to the auctioneer before the beginning of the bidding.

The holder of the right of pre-emption may – apart from being able to participate in the auction as a bidder – exercise the right of pre-emption in respect of all bids by matching the highest bid quoted before the conclusion of the auction (including any extension), and making an offer in the same amount. The highest bid can be accepted by the holder of the right of pre-emption if the acceptance is declared immediately after its calling upon. The auction buyer is that who offers the highest price.

If the holder of the right of pre-emption declares in a statement sent to the auctioneer to abide by the contents of the bid, and if no other valid bid is made for a higher amount before the conclusion of the auction, the holder of the right of pre-emption shall be recognized as the highest bidder. If more holders of pre-emption right declare in a statement to abide by the contents of the bid, the auction buyer will be who is in the first place of rank. In that case if more than one holder of pre-emption right is in the first place of rank the auctioneer decides by lot.

The auction can be unsuccessful. It is recorded in Section 9 of the Regulation. The auction shall be deemed unsuccessful if no bids had been quoted, or the price offered is less than the above mentioned minimal price<sup>24</sup> and if the auction buyer cannot get the ownership of the land according to the Section 5 Subsection (4). Last but not least the auction buyer missed to transfer the money the whole price in time.

If the auction is unsuccessful it has to be repeated (there shall apply the rules of the first auction but with some exceptions).

The offered price cannot be less than minimal price according to rules of the Regulation section 7 Subsection (2)-(4) of the Regulation. If the auction is unsuccessful the agricultural administration body declares it unsuccessful.

If the repeated auction is also unsuccessful the auction is failed. If the auction fails, the land in question shall be transferred under State ownership and shall be assigned to the National Land Fund (as we mentioned above). The agricultural administration body shall communicate its decision on the refusal of approval, and the report on the failure of the auction to the land fund management body as well. The land fund management body shall transfer payment of the appraised value to the bailiff, as appropriate within thirty days following the date of delivery of the final decision or the report on the failure of the auction.

The amount of security deposit of the auction buyer shall comprise part of the purchase price, furthermore the other bidders shall get back their advance money within 8 days.

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<sup>24</sup> Section 7 Subsection (2)-(4) of the Regulation.

At the auction the agricultural administration body makes an official auction report of auction which contains decisions made at the auction, and other important information: for example the name, address, phone number and number of bank account of the agricultural administration body, the place and date (beginning and ending) of the auction, the name and address of the parties, the legal title and amount (subject matter) of the claim to be enforced; moreover the appraised value of land and the minimal price; the highest price offered. It shall include the name, address, nationality and identity number and data of auction buyer.

If the selling is based on the auction buyer's pre-emption right the act – on which the right is based – and the place of rank shall be included; if more than one holder of pre-emption right made offer: their declaration in a statement to abide by the contents of the bid. In this case their (above mentioned) data is necessary. The name of auctioneer is also the element of the report. The petitions and remarks of those present and the answers and measures for it are also the part of the report. Last but not least other data and circumstances prescribed by law can be the element of the official data.

The amount of highest price offered and the name of auction buyer, its nationality, identity number and data, its address, and having the right of pre-emption moreover the decision made at the auction are established in a decision included in the official report.

The finished auction report shall be signed by the auction buyer.

The auction report shall be delivered – within 3 days from closing the report – to the applicant<sup>25</sup>, the auction buyer, bidder who asked it at the auction expressly,<sup>26</sup> the judgement creditor and debtor, moreover those who have rights regarding to the land in the real-estate registration.

If the auction was successful the auction buyer has 60 days to send the price to the deposit account of agricultural administration body. The agricultural administration body calls upon the auction buyer to this if against the decision included in auction report was not applied for legal aid or all legal remedy procedures or decision revision regarding it terminated, or if the auction is not unsuccessful and the competent government office (capital or county), which approves getting the land, adds a clause to the auction report.

If the auction buyer transfers the money in time the agricultural administration body transfers it within 8 days (from its arrival) to deposit account or current bank account pointed out by the applicant and at the same time it sends the auction report which was added a clause.

According to the clause auction report in judicial enforcement procedure the agricultural administration body takes measures to request the real-estate authority to register the ownership.

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<sup>25</sup> According to Section 18 of the Regulation *“The copy of the auction report, which was delivered to the bailiff, shall be delivered to the judgement debtor moreover at the same time the agricultural administration body calls upon the debtor to empty the land/ real-estate within 15 days.”*

<sup>26</sup> To these it shall deliver a copy of the auction report which do not contain personal data except for the name of the bidders.

What happens if the auction buyer missed the deadline? If the auction buyer fails to send the money within 60 days he/she will lose the advance money. In this case the agricultural administration body transfers the 'lost advance money' to the deposit account or current bank account pointed out by the applicant which money can be account for the sales income of judicial enforcement procedure.

### **3.4. Procedure in case of difficulty of auction**

According to Section 14 of the Regulation if the debtor paid his/her debt or the conditions of land auction do still not exist the applicant shall immediately inform the agricultural administration body. For example, if the bailiff requested the agricultural administration body but the debtor paid his/her debt the bailiff shall immediately inform the agricultural administration body that the conditions of auction are not exist anymore.

If the notification arrives at least the beginning of the auction the agricultural administration body terminates its procedure and after delivery of notification auction cannot be scheduled and organized.

The procedure shall also be terminated if the above mentioned notification arrives during the process of auction but before the decision about the auction buyer.

If the procedure is terminated the paid advance money and bids are due back and there shall be take measures to transfer them back within 8 days.

It shall be act on according to the above mentioned in case of stay of judicial enforcement procedure (which can happen on the basis of measure of the court or notary of origin) with that the agricultural administration body stays the bailiff's procedure until the notification about the finish of staying.

### **3.5. Auction of land in joint ownership**

The Section 15 of the Regulation establishes the special rules of land auctions in joint property. The rules of the Regulation shall be used in accordance with Section 15 if the debtor and joint owners request together to the bailiff to sell it by auction the whole land or the part of it, which is in the property of the joint owners.

Thus it shall be pointed out in the request if the judgement debtor and joint owners requested collectively that the whole land or only the part of it, which is in the property of judgement debtor or joint owners, furthermore it shall also be pointed out that the joint owner approves that his/her ownership share is sold by auction at less price than its appraised value.

If the judgement debtor and joint owners request collectively that the whole land or only the part of it, which is in the property of debtor or joint owners, until scheduling the auction, in that case on one hand the auction also shall be scheduled to the ownership share of the requesting joint owner, on the other hand any – of course in accordance with the conditions of the Regulation – joint owner may bid for the established land with the exception of the judgment debtor. The bidding joint owner shall deposit an advance payment reduced accordingly with his ownership share,

and such co-owner, upon buying the land, shall not pay the part of the purchase price consistent with his ownership share.

It is also important that the ownership share of the joint owner may be sold by auction at a price below the appraised value upon his consent. If the joint owner approved it the above mentioned minimum price – established in the Regulation – can be bid. According to Section 16 of the Regulation if joint ownership of a land is ordered to be terminated by auction (by a court decision, a court-approved settlement or document with a writ of execution) any co-owner may bid for the land.

The bailiff points out the lowest price offered included in court decision as the amount of lowest price in its request. There cannot be effective offered lower amount money at the auction than price which was pointed out in this way.

## Conclusion

In our paper we aimed to introduce briefly the auction of land in the mirror of the new regulations. As we can see in the above the regulation changed basically the rules of the auction of the land.

The new rules have similarities with the original immovable property auction rules but the most important difference is that the rules of electronic auction cannot be applied.

Basically according to our viewpoint it can cause corruption in some cases because it is not as 'safe' as the electronic auction where we can register then we can bid without showing our 'name and face'. As a *de lege ferenda* proposal it can be established that regarding to the land auctions electronic auction could be held after a registration in the following way: if the agricultural administrative body issues a certificate which verifies their eligibility for acquiring the ownership, it would be presented after which registration could happen afterwards the electronic auction could be held.